

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

MEMORANDUM

FILED

APR 20 2009

CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
BY \_\_\_\_\_ DEPUTY CLERK

Honorable Anthony W. Ishii  
Chief United States District Judge  
Fresno, California

RE: **Sebastian Mercado-Montano**  
**Docket Number: 1:03CR05358-01**  
**Dismissal of Expired Warrant Case**

Your Honor:

This memorandum is to request the Court vacate and recall the Petition for Warrant or Summons for Offender Under Supervision filed in the above-referenced case on March 30, 2004, and recall the warrant issued April 14, 2004. Pursuant to the Ninth Circuit's ruling in U.S. v. Vargas-Amaya, 389 F. 3d 901 (2004), jurisdiction in this matter has expired.

The Vargas-Amaya case ruled that a warrant alleging a violation of supervised release must be based on facts supported by oath or affirmation as required by the warrant clause of the Fourth Amendment. In response to this ruling, our office superseded many petitions with an oath/declaration statement and added a probable cause finding and order statement for the Court to sign. This particular case was inadvertently missed and the petition was not superseded. This case terminated on January 2, 2006, and because the original warrant was unsupported by an oath or affirmation, the warrant is invalid and jurisdiction has expired. It is recommended the Court dismiss this case and recall the warrant.

Honorable Anthony W. Ishii  
Fresno, California

RE: Sebastian Mercado-Montano  
Docket Number: 1:03CR05358

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### THE COURT ORDERS

- (v) Vacate the Probation 12C - Petition for Warrant or Summons for Offender Under Supervision and recall the warrant in the matter of Sebastian Mercado-Montano, Docket No.: 1:03CR05358-01, pursuant to U.S. v. Vargas-Amaya.

5-17-09  
Date

  
Anthony W. Ishii  
Chief United States District Judge

Respectfully submitted,

  
James E. Herbert

Assistant Deputy Chief U.S. Probation Officer

REVIEWED BY:

  
J.D. Cullers  
Chief United States Probation Officer

Dated: April 17, 2009  
Fresno, California  
JEH

cc: Mark Cullers, Assistant United States Attorney

Marc Ament, Defense Counsel

United States Marshal Service